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No._____

In the
Supreme Court Of The United States
October Term 1993

DARYL J. BERGMANN,

Petitioner,

v.

LEE DATA CORPORATION, a Minnesota corp., now known as Apertus Technologies, Inc., ROBERT GORDON, SARAH MacRAE, GARY WHITE, ROBERT BESINGER and BRIAN KOVALCHUK;

Respondents.

Petition For Review Of Decision Of Court Of Appeals To The Supreme Court For The State Of Minnesota

PETITION FOR WRIT OF CERTIORARI

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PUBLISHER'S NOTE:

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Pg. i

QUESTIONS PRESENTED FOR REVIEW

I. RIGHT TO JUSTICE AND FOURTEENTH AMENDMENT ISSUES

Whether the lower courts denied Petitioner his right to a jury trial and his right to redress his grievances as guaranteed to him pursuant to the Restructured Constitution of the State of Minnesota, Article I, Sections 2, 4, and 8, and the Fourteenth Amendment of the United States Constitution?

II. FREEDOM OF SPEECH AND FOURTEENTH AMENDMENT ISSUES

Whether the lower courts acted so as to abridge Petitioner's right to the freedom of speech guaranteed to him under the First Amendment to the United States Constitution as incorporated by the Fourteenth Amendment?

III. FOURTEENTH AMENDMENT ISSUES PER SE

Whether the lower courts abridged Petitioner's privileges, deprived him of liberty or property without due process of law, or denied him equal protection of the laws as required by the Fourteenth Amendment to the United States Constitution?

TABLE OF CONTENTS TO PETITION

	Page
CAPTION	i
QUESTIONS FOR REVIEW	ii
TABLE OF CONTENTS TO PETITION	iii
TABLE OF AUTHORITIES	iv
REPORTS OF OPINIONS IN THE CASE	x
JURISDICTION	x
CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED	xi
STATEMENT OF THE CASE	1
A. Facts Material To Questions Presented For Review	1
B. Manner Of Raising Federal Question In The State Court	11
ARGUMENT	19
A. Right to Justice And Fourteenth Amendment Issues	19
B. Freedom Of Speech And Fourteenth Amendment Issues	22
C. Fourteenth Amendment Issues Per Se	23
APPENDIX	Separate Volume

TABLE OF AUTHORITIES

Case	Page
Armstrong v. Duffy 90 Ohio App. 233 103 N.E.2d 760	21
Borchardt v. Kulich 48 N.W.2d 318	25
Breen v. Kahl 296 F.Supp. 702 Affd. 419 F.2d 1034 Cert. denied, 90 S.Ct. 1836	23
Brown v. Western Ry. of Ala. 70 S.Ct. 105 388 U.S. 294	14
Bruder v. Wolpert 178 Minn. 330 227 N.W. 46	25
Byars v. U.S. 47 S.Ct. 248 273 U.S. 28	23
Chrysler Corp. v. New Motor Vehicle Brd. 153 Cal.Rptr. 135	23
Cleveland Brd. of Ed. v. La Fleur 94 S.Ct. 791 414 U.S. 632	21

TABLE OF AUTHORITIES

Case	Page
Copperweld Steel Co. v. Industrial Comm. of Ohio 65 S.Ct. 1006 324 U.S. 780	19
Dukich v. Blair 3 F.2d 302 46 S.Ct. 469	26
Durley v. Mayo 76 S.Ct. 806 351 U.S. 277 Rehearing denied, 77 S.Ct. 22	14
Edwards v. So. Carolina 83 S.Ct. 680 372 U.S. 229	23
Gewertz v. Jackman 467 F.Supp. 1047	23
Grove Press Inc. v. City of Phil. 418 F.2d 82	23
Hagar v. Reclamation Dist. 4 S.Ct. 663	28
Harlow v. Ryland 78 F.Supp. 488 Affd. C.A. 172 F.2d 784	19
Hilliard v. Scully 537 F.Supp. 1084	22

TABLE OF AUTHORITIES

Case	Page
Howard v. De Cordova 20 S.Ct. 817 177 U.S. 609	11
Ingram v. Richardson 471 F.2d 1268	20
Jurek v. Estelle 593 F.2d 672 Rehearing, 623 F.2d 929 Cert. denied, 101 S.Ct. 1709	14
Massa v. Nastri 3 A.2d 839 125 Conn. 144	19
Miller v. R.K.A. Mgmt. Corp. 160 Cal.Rptr. 164	22
Morgan v. State of Florida 337 So.2d 951	23
Olson v. Aretz 346 N.W.2d 178	19, 22
Reitman v. Mulkey 87 S.Ct. 1627	27
Republic Pictures Corp. v. Kapppler 66 S.Ct. 523 151 F.2d 543	20

TABLE OF AUTHORITIES

Case	Page
Skelly Oil Co. v. Univ. Oil Prods. Co. 338 Ill. 79 86 N.E.2d 875	21
Southwestern Bell Tel. v. State of Oklahoma 58 S.Ct. 528 303 U.S. 206	14
State v. Nortwstrn. Prep. Sch. 37 N.W.2d 370	27
State v. Pehrson 287 N.W. 313	27
Stockler v. Mich. 98 S.Ct. 1598	27
Toledo, St. L.&W. R. Co. v. Slovin 35 S.Ct. 306 236 U.S. 454	11, 14
Thomas Oil, Inc. v. Onsgaard 215 N.W.2d 793	28
U.S. v. Goodwin 102 S.Ct. 2485 457 U.S. 368 Rehearing, 687 F2d 44	22
Valley Natl. Bk. v. Glover 62 Ariz 538 159 P.2d 292	24, 28

TABLE OF AUTHORITIES

Case	Page
Van Zandt v. McGee 202 F.2d 490	27
Weinberger v. Salfi 95 S.Ct. 2457	14
Whitney v. Madden 400 Ill. 185 79 N.E.2d 593 Cert. denied, 69 S.Ct. 55	24

TABLE OF AUTHORITIES

Consititutional Provisions **Page**

United States Constitution

Article IV, Section 2 ..... xi, 24
First Amendment ..... xi, 6, 22
Fourteenth Amendment ..... xi,, 18, 19-28

Minnesota Restructured Constitution

Article I, Section 2 ..... xii, 19
Article I, Section 4 ..... xii, 19, 28
Article I, Section 8 ..... xii, 19, 28

Statute or Rule

28 U.S.C. Sec. 1257(3) x
28 U.S.C. Sec. 2101(c) x
U.S.S.C. Rules, Rule 13.1 x

Minn Stat., Sec. 336.8-319 ..... 3, 4, 5
Minn.Stat., Sec. 481.08 ..... 3, 5, 18
Minn.Stat., Sec. 513.01 ..... 3, 4, 5
Minn.Stat., Sec. 588.04 7

REPORTS OF OPINIONS IN THE CASE

1. Order and Memorandum, Minnesota District Court, Fourth Judicial District, by Judge Kevin S. Burke, dated March 27, 1992.....Appendix, App. . 29

.

2. Order, Minnesota Court Of Appeals, by Chief Judge Wozniak, filed September 1, 1992 ..... Appendix, App. 5.

3. Order and Memorandum, Minnesota District Court, Fourth Judicial District, by Judge Kevin S. Burke, dated April 1, 1993..... Appendix, App. 6.

4. Unpublished Opinion, Minnesota Court Of Appeals, by Judge Thomas Kalitowski, dated December 13 and filed December 21, 1993 ..... Appendix, App. 2.

JURISDICTION

The judgment of the Court Of Appeals for the State of Minnesota was entered on December 21, 1993, affirming the Trial Courts Orders Dated March 27, 1992 and April 1, 1993 denying Petitioner's Motion To Vacate The Dismissal and granting specific enforcement against Petitioner of an unexecuted settlement agreement. On February 24, 1994, the Supreme Court of the State of Minnesota entered its Order denying review. This Petition For Writ Of Certiorari was filed within 90 days of that date pursuant to 28 U.S.C. Sec. 2101(c), USSC Rule, Rule 13.1. The jurisdiction of this Court is founded upon 28 U.S.C. Sec. 1257(3), prg. 3, and interpretative case law.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

PROVISIONS OF THE UNITED STATES CONSTITUTION

Article IV, Section 2, First Paragraph, United States Constitution:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

First Amendment, United States Constitution:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fourteenth Amendment, First Paragraph, United States Constitution:

"1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

PROVISIONS OF THE RESTRUCTURED CONSTITUTION OF THE STATE OF MINNESOTA

Article I, Section 2,
Rights and privileges

"No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the state otherwise than as punishment for a crime of which the party has been convicted."

Article I, Section 4,
Trial by jury

"The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy. A jury trial may be waived by the parties in all cases in the manner prescribed by law. The legislature may provide that the agreement of five-sixths of a jury in a civil action or proceeding, after not less than six hours' deliberation, is a sufficient verdict."

Article I, Section 8,
Redress of injuries or wrongs

"Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws."

MINNESOTA STATUTES AND RULES OF CIVIL PROCEDURE

Minnesota Statutes Sections:
(Fully set forth at Appendix, App. 49)

Stat. of Frauds [Stocks].....336.8-319
Stat. of Frauds [General]. 513.01
Authoity.....481.08
Order to Show Cause 588.04

Minnesota Rules Of Civil Procedure:
(Fully set forth at Appendix, App. 42

Rule 6.04 For Motions and Affidavits
Rule 7.02 Motions and Other Papers
Rule 11.00 Signing of Pleadings
Rule 12.06 Motion to Strike
Rule 52.01 Findings by Court
Rule 63.02 Interest of Bias

Minnesota General Rules Of Practice:
(Fully set forth at Appendix, App. 46)

Rule 115.02 Obtaining Hearing Date
Rule 116.00 Orders to Show Cause

Minnesota Rules Of Civ. Appellate Proc.:
(Fully set forth at Appendix, App. 46)

Rule 103.03 Appealable Judgments
Rule 104.01 Time for Filing
Rule 108.03 Extent of Stay
Rule 110.05 Correction of Record
Rule 128.02 Formal Brief
Rule 128.03 Refs. in Brief
Rule 140.01 Petition for Rehearing

STATEMENT OF THE CASE

A. Facts Material To Questions Raised For Review.

This case has not been tried

Petitioner was employed by Lee Data Corporation as its Director Of Legal Services under a contract of employment. Petitioner was responsible in his position to handle legal matters, and control outside legal services and costs, which were performed by the law firm of Dorsey & Whitney, ("Dorsey"). Shortly after Dorsey publicly announced their hiring of former Vice President Walter Mondale to head its international law section, Lee Data's management announced its proposal for a major joint venture with its overseas customer, Olivetti International. Thereafter management told Petitioner not to be concerned about Dorsey's fees in connection with cost control. Substantial legal fees were paid to Dorsey for redundant and unproductive efforts in connection with the proposed venture. Petitioner questioned management for paying unnecessary legal fees in excess of $100,000. Petitioner also questioned Dorsey for promoting the joint venture proposal without any real purpose other than to artificially inflate the price of Lee Data stock in order to allow management to unfairly profit from their stock options.

Shortly after these issues arose, Petitioner was falsely accused of sexual harassment on allegations put to him by management. Petitioner was offered $10,000 in exchange for a resignation and release. When he declined, Petitioner was threatened that he would be fired and falsely and publicly labeled a sexual harasser. Petitioner still refused to accept the payment or sign a release of employment and management followed through on those threats.

Petitioner was wrongfully terminated from his employment on false allegations. This litigation was initiated to force

Respondents to produce first hand testimony and evidence of the sexual harassment charge. During the past five years of litigation Petitioner has not been allowed by the court to obtain a full deposition, charge or sworn statement by a victim, or obtain discovery of notes identified as part of a charge. Further, the court has refused to hear Petitioner's motions for sanctions against Respondents or Dorsey for their willful concealment of certain summary notes, (the "White Notes"), or to compel production of those documents. [Respondents produced some hearsay testimony by management officials and other employees under their control, but not even those allegations put forth a prima facie allegation of sexual harassment.]

Throughout the ensuing litigation Dorsey's counsel and the courts acted in an oppressive manner with an intentional disregard for Petitioner's constitutional rights.

The record shows that the lower courts knowingly allowed Respondents' to violate Protective Orders, court rules, and to put forth misrepresentations on the record with impunity at every stage of the litigation and appeal of this case.

In the fall of 1991, Respondents' put forth a dismissal of the case to the court based on a purported settlement agreement that had been procured by fraudulent means. All the signature and intended notary acknowledgment lines of the settlement agreement form are blank and there is no signature of acceptance on the document. There is a scribbled notation by Petitioner's attorney, in the margin of the last page of the form, stating: "Reviewed by Alan G. Greenberg 9/27/91 meets our discussion of agreement". The document includes a clause specifying a requirement for Petitioner's personal signatory acknowledgment. (Refs: Rsps.Am.Ord., Aug.4, 1992; Apl.Brf.)

Promptly after discovering that the case had been dismissed, Petitioner notified the court of the fraud, and moved to set the

dismissal aside. At the same time Petitioner sought discovery on grounds of misconduct and misrepresentation by Dorsey's attorneys, (ref: Ptrs.Mot., Nov. 27, 1991). By that motion Petitioner asked the court for a brief in-camera review of documents to show Dorsey's misconduct. The court refused to hear or consider Petitioner's in-camera hearing and discovery requests, and prohibited Petitioner from entering a tape recorded statement by his former attorney into evidence. The court affirmed its dismissal, (Order, App. 29).

Petitioner then appealed to the Minnesota Court of Appeals. On the same day, the trial court amended its prior order and decided to rehear the matter on Respondent's motion to specifically enforce the unsigned settlement agreement against Petitioner. Contravening its jurisdiction and obligation pursuant to its own rules, (MRCAP, Rules 103.03, 108.03), for the purpose of "judicial economy", (ref: Order, App. 5), the Court of Appeals dismissed Petitioner's appeal to allow the trial court to act on Respondents' motion. .

On memorandum submission to the trial court Petitioner argued that the disputed settlement agreement was not signed as required by its express terms, or as required by Minn.Stats. Secs. 481.08, or other statutory requirements, (refs: Rsps.Am.Ord., App.Brf. A-45, ls. 11-23; A-47, l. 12 to A-49, l. 16; and A-49, l. 17 to A-51). Petitioner's papers showed that the court had made clearly erroneous assumptions in connection with its prior order and memorandum dated March 27, 1992, (ie: the court had erroneously assumed that certain costs and sanctions had not been paid); and, that the dismissal was a result of attorney misconduct. The court found that Petitioner's attorney had authority to settle, that he made an oral settlement agreement, and then ordered specific enforcement of the written document. The trial court did not find that the settlement agreement had been signed for the purpose of accepting the written document. (Ref: Order, Apr. 1, 1993, App. 7) The court also decided that the case would have been

alternatively dismissed for late payment of sanctions. Petitioner thereupon reasserted his appeal in the case. On appeal the court denied Petitioner's right to claim the defense of the Minnesota Statute of Frauds, Minn.Stats., Secs. 513.01 and 336.8-319. The Court of Appeals affirmed the trial court's dismissal and specific enforcement of the written document, and alternatively decided that the attorney's notation would satisfy the statute of frauds. Petitioner then filed for writ of certiorari for review by the Minnesota Supreme Court. The Supreme Court denied certiorari, and this Petition is taken from that order dated and filed February 24, 1994.

Certain instances of court action denying Petitioner's privileges, equal protection, and due process in this case are described below:

(1) In their response to the Petition For Writ Of Certiorari to the Minnesota Supreme Court, Respondents submitted a lengthy reply brief that contained numerous pages of inflammatory falsified comment that did not appear on the record in the case and which the Court of Appeals had ordered striken from the record. (Ref:. Minn. Ct. Appls. Decs. App. 4 and Ptrs. motion papers filed with Ct. Appls. Oct. 25, 1993 and Nov. 4, 1993) Every page of the "Argument" section of Respondents' Brief includes false allegation and innuendo. Petitioner was irreparably harmed by Respondents' willful order violation because there is no procedure in Minnesota allowing a rehearing of the Supreme Court's denial of Certiorari, and the first and only opportunity for review is by this Petition For Certiorari.

(2) In the Court of Appeals, the court refused to rule on Petitioner's Motion To Supplement The Record. Petitioner filed his duly served motion on November 10, 1993. The motion was necessary because many of Petitioner's papers and critical supporting affidavits that proved Respondents misrepresentations and other willful misconduct were missing

from the court file. The documents were listed on the court record index, and had been properly served and filed. Respondents did not serve any paper to contest or object to Petitioner's Motion. The Court of Appeals ignored Petitioner's Motion, which was properly before it pursuant to MRCAP, Rule 110.05. By not ruling on that Motion the Court of Appeals shielded a large portion of the record from the view of the Supreme Court, and from public exposure of many improprieties in the case by the Respondents, and the lower court.

(3) The Court of Appeals denied Petitioner's initial appeal for purposes of judicial expediency by allowing the trial court to continue to review the case. That order was made without precedent and in disregard for Petitioner's due process rights. Minnesota law stays the action of a trial court pending appeal when a party files a bond pursuant to MRCP, Rule 108.03. Petitioner properly filed his bond and perfected his appeal on July 15, 1992. Petitioner was entitled to a stay of the trial courts further actions in connection with the issues appealed. Therefore, the trial court did not have jurisdiction in the case to "close" the record, specifically enforce the alleged settlement agreement, proclaim an oral contract, or take any other action after July 15, 1992 on the issues appealed. The appeals court was obligated to hear the case when the initial appeal was perfected. The appeal court's improper dismissal delayed the case for a full year and afforded the opportunity for the trial court's continued abuse of discretion.

(4) While dismissing Petitioner's initial appeal to permit further trial court action, the Court of Appeals dismissed on the merits a portion of the appeal that related to discovery and sanction orders issued prior to October 1991. In dismissing the appeal as to those orders the Court Of Appeals reasoned that they did not have jurisdiction over the judgment and orders entered on or before October 1991. The Court Of Appeals allowed the appeal as to the final entry of judgment filed

March 27, 1992 and as to all issues raised by Petitioner's Motion To Vacate The Dismissal dated November 27, 1991. [The court then dismissed the otherwise valid appeal pending further trial court involvement, as described by point 4 above.] Petitioner's Motion To Vacate The Dismissal included new descovery request. based on the new grounds and facts raised as to Respondents' misrepresentations and misconduct. The Court Of Appeals was obligated to review Petitioner's grounds and motion for completing his discovery, and for setting aside the sanction orders based on misrepresentation and misconduct.

(5) The trial court denied Petitioner's discovery in the case on grounds that: (i) the accusation of misconduct was "preposterous", (A-417, l. 5); and, (ii) Petitioner's showing that Respondents knowingly manufactured false testimony by illegal means to defame Petitioner is simply "part of the American system of justice". (See refs., Id.; Crt.Rptrs.Aff., A-461-463; Order, A-400, prg. 2). These are not legitimate reasons to block discovery, but served the purpose of intimidating the Petitioner and suppressing his First Amendment right to free speech. Based on the sworn testimony of the Defendant Gary White, Respondents knowingly concealed important discoverable documents. Petitioner's allegations of other forms of misrepresentation and misconduct were also well documented and supported by several disinterested affiants.

(6) The trial court denied Petitioner's right to a hearing and to compel Respondents' to appear and answer Petitioners' motion and evidence showing their misrepresentations to the court and other misconduct in the case. Procedurally these circumstances arose as follows: Respondents filed a motion to strike Petitioner's response to the trial court's amended order filed July 14, 1992; Respondents' motion contained incomplete and false information and was a sham motion by definition of MRCP, Rules 7.02, 11 and 12.06 because it was based on

unsigned documents, did not notice a hearing date and Petitioner had not been given an opportunity to be heard on his adverse fact allegations opposing Respondents' papers as false and contradictory. Further, the trial court was stayed from hearing the sham motion under MRCAP, Rule 108.03, Respondents' sham motion was made solely for the purpose of getting certain affidavits before the Court of Appeals; Petitioner replied to Respondents' sham motion by documenting the misrepresentations and misconduct in making the motion and in other matters throughout the case up to that point. Following Petitioner's reply submission the Respondents' attorneys would not set a hearing on their own motion so Petitioner noticed Respondents' motion and his cross-motion for hearing; when Respondents refused to appear at the hearing Petitioner submitted his duly noticed Application For Order To Show Cause as to why Respondents should not be held in contempt for their misrepresentations, misconduct, and failure to appear at the hearing. [By reference, Petitioner's Application fully incorporated his reply to Respondents motion to strike.] The trial court judge completely ignored Petitioner's Application, cross-motion and reply to Respondent's motion to strike. Petitioner's Application was duly made pursuant to Minn.Stat. Sec. 588.04, and MRCP, Rule 6.02. Petitioner was entitled, under Minnesota law, to make his Application For Order To Show Cause. Petitioner's Application included documentary evidence proving Respondents concealed the identity of material discoverable information in the case, (Apl Brf., A187); that Respondents twice violated the Protective Order in the case for the purpose of maliciously damaging Petitioner's reputation, (Apl. Brf., A190); that Respondents' lied and committed perjury in connection with their motion papers served August 19, 1992; that Respondents' incited threats of physical harm to Petitioner and his family; and, that they bribed a witness and helped her manufacture false testimony to defame Petitioner, (Apl. Brf. A149, 197). Petitioner is entitled to confront Respondents for these actions and to a hearing on the evidence.

(7) The trial court used sanctions against Petitioner in an oppressive manner for the purpose of suppressing his claims, opinions and lawful discovery.

The court ordered sanctions were based on Petitioner's alleged failure to make discovery of certain notes he claimed to be protected as attorney work product. Petitioner supported that claim with affidavits of three attorneys and his own affidavit. At the same time Petitioner sought discovery of certain notes which allegedly supported a charge of sexual harassment against Petitioner.Respondents claimed that their documents were subject to protection as attorney work product based on a statement by Lee Data's personnel representative, the Respondent Mr. White, (who was only responsible for taking some of the notes himself), that he believed the charge could lead to litigation because Petitioner is a lawyer. Cross-motions to compel discovery were then filed. Shortly before the hearing scheduled for the cross-motions, Petitioner's attorney promised and delivered Petitioner's notes to Respondents' attorneys based upon a mutual promise by respondents to release their documents. Instead of releasing their notes, Respondents' attorneys reneged on there verbal commitment, went ahead with the hearing and demanded attorney fees against Petitioner. The court then issued an order imposing sanctions of against Petitioner and denying Petitioner's discovery of Respondents' notes. Before issuing its final ruling on this matter the trial court ordered a pretrial conference. At the conference, Respondents made a settlement offer of $10,000 to Petitioner. The trial judge told Petitioner to either accept the settlement offer or he would impose sanctions of $2,000. Petitioner declined the offer of settlement and the trial judge sanctioned Petitioner $2,000under the guise of a failure to produce the documents that Petitioner's counsel had already delivered to Respondents' attorneys.

Petitioner then asked that the case be transferred to a different judge. The trial judge (Judge Sommerville) arranged to transfer the case to Judge Burke, who has admitted on the record that he is a close personal friend of Judge Sommerville. The Assignment Office for civil cases in the Fourth Judicial District makes judge assignments by a computer generated random selection. When a judge removes himself as Judge Sommerville did in this case, judges are reassigned by the Assignment Office again pursuant to a computer generated random selection. Judge Sommerville and Judge Burke went outside of court procedures to arrange the transfer of the case because Judge Burke is a personal friend of Judge Sommerville's. MRCP, Rule 63.02 requires that, "No judge shall sit in any case if that judge might be excluded for bias from acting therein as a juror." That rule is mandatory, not discretionary. In this case Judge Sommerville's conduct was called into question in the trial court. Judge Sommerville's onduct and Petitioner's requests for discovery were therefore reviewed by his personal friend, Judge Burke, by special arrangement made outside of the normal procedure for assignment in the court.

When taking the case Judge Burke agreed to reconsider Judge Sommerville's sanction order. When making his decision Judge Burke sanctioned Petitioner an additional $7,247.50 plus a $1,000 charge for "court costs", on the assumption that Petitioner willfully violated the first court order to pay $2,000 in sanctions. Petitioner's attorney excluded Petitioner from the hearing on these issues.

The Court Of Appeals did not review or rule on any of these matters, presumably on the basis that the trial court rulings were issued before October 1991 pursuant to the explanation given at paragraph 4 above. However, all of these issues in connection with sanctions and the underlying discovery were raised after October 1991 by the trial court in its orders of March 27, 1992 and May 3, 1993; and by

Petitioner's Motion To Vacate The Dismissal and timely appeal of the orders resulting from that motion.

Before this lawsuit was served, Petitioner filed professional misconduct charges against certain Dorsey attorneys, and sought to inform the Lee Data board of directors as to conduct by management and Dorsey indicating an embezzlement of shareholder funds and a kickback scheme. The misconduct charges were reviewed by Vance Opperman, who has publicly been referred to as the "God Father" of the Democratic Party in Minnesota, and by William Wernz, who was later hired by Dorsey at a substantial salary increase. The misconduct charges were deferred to the court because Mr. Opperman stated he "anticipated litigation". The courts refused to act on motions, show cause order applications and other proper means by Petitioner to obtain a remedy for Dorsey's misconduct in the case. Following the improper dismissal of the case, Petitioner again sought review of attorney misconduct. Upon that filing the Lawyers' Review Board suppressed the investigation and threatened misconduct charges against Petitioner because of his allegations against Dorsey and Respondents. The Board investigator who was assigned, works for the state's attorney general, H.H. Humphrey III, an influential leader of the Democratic party in Minnesota. The investigator refused to review the information documenting the misconduct, including statements by two attorneys indicating that Petitioner's former attorney, Mr. Greenberg, had sold-out other client cases.

This Petition is founded on the lower courts' willful disregard of Petitioner's fundamental constitutional guarantees. Petitioner claims that the Minnesota courts are politically intertwined with, dependent upon and subject to control by the law firm of Dorsey & Whitney. For political reasons important to Dorsey and the Democratic party in Minnesota, Petitioners' views and legal actions have been wrongfully suppressed.

[Note: Certain facts herein, while not on the record, are well known publicly and are subject to judicial notice. Those facts are submitted on the basis of Howard v. De Cordova, Tex., 20 S.Ct. 817, 177 U.S. 609, to put this case in political context for the Court and demonstrate "purpose".]

B. Manner Of Raising Federal Question In State Court.

First jurisdiction is based on matters which could not be appealed under state court procedure and that concern a federal question reviewable by the United States Supreme Court. Toledo, St. L.&W. R. Co. v. Slovin, Ohio, 35 S.Ct. 306, 236 U.S. 454.

Petitioner is bringing an issue here that could not be decided by the Minnesota Courts. This is because Respondents filed a sanctionable "Response To Petition" to the Supreme Court of Minnesota in reply to the "Petition For Review" and in willful disregard of the Court Of Appeals decision striking a substantial portion of their brief. The Minnesota Supreme Court denied Petitioner's request for certiorari after reviewing Respondents' sanctionable brief. Minnesota rules do not allow a rehearing of petitions for writ of certiorari. MRCAP, Rule 140.01 states that: "No petition for reconsideration or rehearing of a denial of a petition for review provided by Rule 117, or of a petition for accelerated review provided by Rule 118, shall be allowed in the Supreme Court." Petitioner submitted his "Petition For Review" to the Minnesota Supreme Court pursuant to MRCAP, Rule 117, and he is denied any right of reconsideration under Rule 140.01.

The Court Of Appeals decision at page 2, lines 19-22 states, "Appellant has moved to strike portions of respondents' brief that he contends are not part of the record on appeal. We grant appellant's motion with respect to the deposition transcripts contained in respondents' appendix." Respondents then completely disregarded the Court Of Appeals ruling and submitted their identical brief to the Minnesota Supreme Court to defeat Petitioner's request for certiorari. Respondents appellate reply brief substantially violated MRCAP, Rule 128.02. The violations are pervasive, material and seriously prejudicial to Appellant. Respondents' Statement Of

The Case consists of 22 pages and is found at pages 2 to 23 of their brief. Nineteen of those pages contain false assertions that are not on the record. Respondents' appendix includes 32 pages of documents not on the record and improperly used as references throughout the brief. Despite Respondents' clear violation of the appeals court ruling, the Supreme Court did not stike or dismiss Respondents' sanctionable brief. The material in the brief was prejudicial as a matter of law under the appellate court ruling and the Supreme Court's denial of the Petition For Certiorari followed from that court's review of Respondents' prejudicial papers.

At every stage of litigation and appeal the Respondents have committed similar willful violations in the presence of the court with absolute impunity. In his request for review Petitioner informed the Supreme Court that:

"Prejudicial rule violations, misconduct by the attorneys, and the appearance of impropriety by the court in applying a double standard, are thoroughly documented in this case. (See Ptrs.Rsps., A-141-362; Apl.S.C., A-363-394; Ptrs.Mot., Ra-58-78; Ptrs.M.Stk.)"; and,

"The lower courts used a double standard in the application of rules, orders and sanctions throughout the case to cause an unjust harm to Petitioner. The courts put aside well documented instances of prejudicial bad faith and misconduct by Respondents' attorneys, and denied Petitioner's motion for discovery on such grounds, but on the other hand freely sanctioned Petitioner financially and in his discovery on clearly erroneous assumptions and without good cause.

"An exercise of the Supreme Court's supervisory powers, and public scrutiny of this case, are necessary to preserve substantial protective principles and to prevent the application of a double standard in favor of politically powerful and influential law firms such as Dorsey & Whitney. Such concerns have been

presented to the court before, and will be presented in the future unless the Supreme Court intervenes now."

Second, a federal question of due process or equal protection may not be apparent until a pattern of arbitrariness is fully developed. Jurek v. Estelle, C.A.Tex., 593 F.2d 672, rehearing 623 f.2d 929, Cert. denied 101 S.Ct. 1709; Brown v. Western Ry. of Ala., 70 S.Ct. 105, 388 U.S. 294; A conscious exercise of selective enforcement of the law is based on an unjustifiable standard which may be shown by a pattern of arbitrariness, Weinberger v. Salfi, Cal., 95 S.Ct. 2457; Jurek, Id. In this case the record shows that the Minnesota courts either arbitrarily or purposely violated Petitioner's constitutional rights at every level throughout the litigation. That did not become completely apparent until denial of review by the Minnesota Supreme Court and that court's permissive review of Respondents' brief submitted in violation of the Court Of Appeal's decision.

Third, it is fully apparent from the record that the decisions of the lower courts could not have been reached except by disposing of the federal questions raised here. Toledo St.L. & W.R.Co. v. Slovin, Id.; Southwestern Bell Telephone v. State of Okl., 58 S.Ct. 528, 303 U.S. 206; Durley v. Mayo, Fla, 76 S.Ct. 806, 351 U.S. 277 rehearing denied 77 S.Ct. 22. When Petitioner became aware of the unauthorized dismissal of his case, he promptly informed the trial court and the parties by way of a 21 page letter dated November 27, 1991, with supporting affidavits, exhibits and a motion to vacate the dismissal, submitted and filed as part of the court record and pointing out due process and equal protection issues:

"In conjunction with Dorsey's oppressive conduct toward me, the Court's sanctions have resulted in an extraordinary hardship that has prevented me from obtaining even the

simplest element of fairness -- a complete statement by the alleged victim regarding her purported charge against me. On the other hand, the record shows that the Court has allowed every possible leniency in the discovery requests made by Dorsey & Whitney, and in imposing those sanctions against me. The record further shows that the Court has made several nusual rulings in this case that strain and controvert very clear rules of civil procedure." [Nov. 27, 1991 Ltr., p. 13.]

The entire letter discusses the court's permissive posture toward misconduct by Respondents, and sanctions against Petitioner for alleged misconduct by Petitioner's attorney.

With respect to a hearing on fraud evidence Petitioner said: "Due to the oppressive and wrongful conduct of opposing counsel, as described above, I am asking the Court to intervene and conduct an inquiry to prevent fraud. Initially, I am asking for a limited scope inquiry that will involve the review of notes taken at the time of the investigation of accusations of sexual harassment against me, and typed investigation summary documents, and to briefly examine the Defendant Ms. MacRae." [Nov. 27, 1991 Ltr., p. 20.]

"Direct judicial intervention is the only way to stop the wrongful conduct of Dorsey's attorneys and prevent fraud, prevent a serious fraud on the Court, and unravel the complex distortions created by Dorsey & Whitney's attorneys in this case. The Court's inquiry will show that the dismissals in this case and the sanctions against me must be set aside due to the fraud and misconduct of Dorsey & Whitney's attorneys and their clients." [Nov. 27, 1991 Ltr., p. 21.]

"When weighing the equities in determining the Court's action here, the Court should consider that the misconduct of opposing counsel in this case has effectively ruined my entire legal career. I am asking the Court to make an initial inquiry that should require no more than a few hours of the

Court's time and which will reveal the basis of opposing counsels' misconduct."[Nov. 27, 1991 Ltr., p. 21.]

"Following is a discussion of some of the known and alleged acts of misconduct in this case. The case record shows that those acts have caused the Court to provide every leniency to the defendants in their discovery and their efforts to conceal the truth and impose undue sanctions against me. At the same time, the Court has consistently constrained its rules in a manner that has seriously harmed the effectiveness of my discovery and caused the truth to be suppressed. In particular, after nearly three years of litigation the tactics of opposing counsel and the Court's rulings have worked together to prevent, hinder and delay the taking of the deposition of the Defendant Sarah MacRae [the alleged accuser of Petitioner]...and to prevent me from discovering crucial documents that show the falsity of that accusation."

The trial court denied Petitioner's above requests for in camera review, discovery, a separate hearing on the sanction payments, and other matters, and stated that the actions alleged by Petitioner are no more than what attorneys are suppose to do as part of the American system of justice. [The court file notes and recording of these statements disappeared from the court files, but are documented by Court Rptrs. Aff., Aug. 24, 1992, at A-461 to A-463 of Appl. Brf. Apx. of Aug. 30, 1993.]

Excerpts of Petitioner's Memorandum And Affidavit In Response To Defendants' Motion To Strike, dated November 19, 1992, are found at the Appendix, pps. 76 to 96. Due process and equal protection issues were brought to the attention of the trial court by those papers and the later served Application For Order To Show Cause which incorporated those papers by reference. On both filings the court refused Petitioner's right to a hearing and remedy, and ignored the facts and filings which the court would not rule on.

Petitioner's Notice Of Appeal and Statement Of The Case dated July 15, 1992, cited the same underlying due process, equal protection and privilege issues stating in part:

"During the ensuing litigation, the trial court abused its discretion and erred by: preventing Appellant's reasonable and necessary discovery; imposing harsh and unjust sanctions against the Appellant individually for the acts of his attorney; failing to sanction Appellant's and espondent's counsel for blatant misconduct; committing illegal acts of coercion in an attempt to force Appellant to dismiss his lawsuit and to retaliate against the Appellant; and failing to vacate Respondents' Stipulation And Order For Dismissal and Judgment entered thereon."

The appeals court blocked Petitioner's lawful right to his initial appeal, (discussed at prg. (3) above), and allowed Respondents to enter falsified documents in the appeals court without allowing Petitioner his right to contest those documents in the trial court, (discussed at prg. (6) above). That issue was raised by Petitioner's Motion To Correct The Record made to the appeals court pursuant to MRCAP, Rule 110.05, and filed September 4, 1992, and dismissed without consideration by Order filed September 25, 1992, (App. 25). The trial court also refused to consider Petitioner's papers, motions and application on this same matter, (ref. prg. (7) above). [This issue was raised to the trial court by Application for Order to Show Cause dated Nov. 23, 1992.]

Petitioner's renewed Notice Of Appeal and Statement Of The Case served July 23, 1993 discussed the same underlying issues of equal protection and due process as initially presented. Additional questions were raised because of the intervening circumstances of the case including:

"Whether the trial court abused its discretion, or otherwise erred as a matter of law, by denying Appellant's request for a

review of facts and allegations concerning attorney and judicial misconduct, as requested by Appellant for purposes of framing and bringing a motion to vacated the dismissal?

"Did the trial court abuse its discretion, or otherwise err as a matter of law, by following a pattern of unlawful misconduct or oppression so as to attempt to coerce the Appellant to dismiss his suit?"

Petitioner discussed these issues by way of his Brief served August 30, 1993, his Reply Brief served October 12, 1993, and motions served October 25, 1993, October 29, 1993 and November 4, 1993. Relevant portions of those papers are included at the Appendix, pps. 51-75.

The Appellate Court decision of December 13, 1993 affirmed the trial court order. The appeals court found that the trial and appellate court conduct did not "frustrate justice" in this case and in so ruling clearly decided Petitioner's constitutionally guaranteed Fourteenth Amendment rights to due process, equal protection and entitlement to the same privileges as every other citizen. The court denied Petitioner's right to the defense of the Statute of Frauds sections, and Minn.Stat., Sec. 481.08. As to misconduct allegations the court decided that Petitioner "cannot substantiate his assertions" thereby necessarily deciding that Petitioner was not entitled to his discovery rights or even to a lower court hearing on those issues. That decision was determinative of Petitioner's due process, equal protection and entitlement to guaranteed privileges under the law.

Moreover, the Court Of Appeals decided Petitioner's constitutionally guaranteed First Amendment right to free speech and free expression of his opinions. The pattern of violations and misconduct by attorneys and the courts in this case were willful and pervasive. Those acts were clearly oppressive and effectively suppressed Petitioner's First Amendment rights at every stage, including his Petition For Writ to the Minnesota

Supreme Court which was suppressed upon Respondents' submission of their brief in violation of the appeals court decision striking a major portion of their brief.

In his Petition for review by the Minnesota Supreme Court, (specific references cited above), Petitioner restated the violations of his rights. Respondents submitted their sanctionable brief in willful disregard for Petitioner's rights, and the Court Of Appeals ruling to strike their brief. The Petition was denied and in so deciding the Minnesota Supreme Court continued the state's pattern of allowing the further rule and court order violations by Respondents' attorneys. The court necessarily decided Petitioner's constitutionally guaranteed rights to due process, equal protection and entitlement to the same privileges as every other citizen, (Copperweld Steel Co. v. Industrial Comm. of Ohio, 65 S.Ct. 1006, 324 U.S. 780); and acted to further oppress Petitioner's First Amendment rights.

ARGUMENT

I. RIGHT TO JUSTICE AND FOURTEENTH AMENDMENT ISSUES

The lower courts denied Petitioner his right to a jury trial and his right to redress his grievances as guaranteed to him pursuant to the Restructured Constitution of the State of Minnesota, Article I, Sections 2, 4, and 8, (Olson v. Aretz, App. 1984, 346 N.W.2d 178), and the Fourteenth Amendment of the United States Constitution.

Petitioner's vested rights in his career, reputation, cause of action and statutory defenses, and contract claims are at stake in this case. Harlow v. Ryland, D.C.Ark., 78 F.Supp. 488, affd. C.A. 172 F.2d 784; Massa v. Nastri, 3 A.2d 839, 125 Conn. 144. Petitioner is entitled to strict judicial scrutiny by the Court

in its duty to preserve his constitutional rights here. Rep. Pictures Corp. v. Kappler, C.C.A. Iowa, 151 F 2d 543, 66 S.Ct. 523. The lower courts have labeled Petitioner an "obstructionist" and a sexual harasser in denying his constitutional rights. The courts have stated their reluctance to apply their time to Petitioner's pro se motions, (ref: Dist.Crt.Ords. at App. and App. concerning the courts' "scarce" time resources; and Minn.Ct.Apls. Ord. at App. dismissing Petitioner's perfected appeal for purposes of "judicial economy"), and have ignored several duly served and filed papers and motions which factually detail Respondents' prejudicial misconduct, (ref: Cross Motion, Memo., Aff. and Exhs. dated Nov. 19, 1992, at Apl.Brf. pps. A-141 to A-362; Appl. for Ord. to Show Cause dated Nov. 23, 1992, at Apl.Brf. pps. A-363 to A-394; Mot. and Aff. to Supplement the Record submitted to the Ct.Appls. Nov. 10, 1993; Mot. to Correct the Record submitted to the Ct.Appls. Sep. 4, 1992 and to the Dist.Crt. Nov. 23, 1992; and, Minn.Spr.Crt. refusal to acknowledge Ct.Appls.Decis. filed Dec. 21, 1993 at App. 2, striking substantial portions of Rsps.Brf. and Petitioners supporting Motion to Strike dated Oct. 25 and Nov. 4, 1993.) Congestion in the courts is not grounds for denying access to the courts, (Ingram v. Richardson, C.A.Ky., 471 F.2d 1268).

The lower courts have denied Petitioner's request for a few hours of time for an in-camera review of notes which Respondents were found to have willfully concealed from identification and production as required by Petitioner's lawful discovery requests, (ref: Ptrs.Mot. dated Nov. 27, 1991, at Rsps.Brf. RA-58 to RA-78).

The trial court's inability to take the time to acknowledge and act on Petitioner's motions have resulted in documented material errors, as follows: 1) making incorrect assumptions about facts not in evidence, [Note: For example, the court's Order dated March 27, 1992 was based in part on its

seriously mistaken assumption that Petitioner had not paid certain attorney fees of $2000 and court costs of $1000.]; 2) keeping important papers, duly served and filed by Petitioner, off the record, [Note: Ct.Appls. avoidance of Ptrs. Mot. to Supplement the record with respect to documents served and filed, and include on the trial court file index, but which had been lost or misfiled by the trial court.]; 3) allowing Respondents to file falsified affidavits on the record by way of a "sham" motion containing unsigned affidavits without notice of hearing or a hearing on their motion, and which MRCP, Rules 11 and 12.06 require to be sticken, (ref: Ptrs. Motion to Correct the Record, Sep. 4, 1992); 4) denying Petitioners rights under the Protective Order which Respondents have violated at least twice; 5) denying Petitioner's right to a trial as to material facts in dispute in the case; and other prejudicial errors.

Petitioner's protected fundamental rights have been transgressed with impunity and disregarded for purposes of expediency in this case. These are compelling grounds for review. Cleveland Brd. of Ed. v. La Fleur, Ohio, 94 S.Ct. 791, 414 U.S. 632; Armstrong v. Duffy, 103 NE2d 760, 90 Ohio App. 233.

The Restructured Constitution of the State of Minnesota holds the right to a trial by jury inviolate regardless of the amount involved, (Art. I, Sec. 4); grants every person the right to a certain remedy in the laws for all injuries or wrongs to a person, and a person's property or character, (Art. I, Sec. 8); entitles every person to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws, (Art. I, Sec. 8); and secures those rights to every citizen similarly situated, (Art. I, Sec. 2). These are self-executing, (Skelly Oil Co. v. Univ. Oil Prods. Co., 86 NE2d 875, 338 Ill.App. 79), mandatory provisions which have been denied to Petitioner in this case. They are substantive elements of due process in the State of Minnesota

and are further guaranteed to Petitioner by the United States under the due process and equal protection clauses of the Fourteenth Amendment. Hilliard v. Scully, D.C.N.Y., 537 F.Supp. 1084; Ruiz v. Estelle, 679 F.2d 1115 and 688 F.2d 266, cert. denied, 103 S.Ct. 1438.

Repeated sanctions imposed on Petitioner, without due process as to his proof of misconduct by the attorneys in the case, violated Petitioner's right to free justice, without purchase, and imposed a fear of unwarranted sanctions. (Miller v. R.K.A. Mgmt. Corp., 160 Cal.Rptr. 164; U.S. v. Goodwin, 102 S.Ct. 2485, 457 U.S. 368, rehearing, 687 F.2d 44.)

Last, there are substantial material fact disputes to require a jury trial in this case. The settlement agreement documentation, alleged "signature", statutory defenses of Minn.Stat., Secs. 336.8-319, 481.08, and 513.01, circumstances of coercion and misconduct by Respondents, all are matters to be determined by a jury. (Olson, Id.; Wise v. Midtown Motors, 231 Minn. 46, 42 N.W.2d 404.)

II. FREEDOM OF SPEECH AND FOURTEENTH AMENDMENT ISSUES

The lower courts have acted so as to abridge Petitioner's right to the freedom of speech guaranteed to him under the First Amendment to the United States Constitution as incorporated by the Fourteenth Amendment. The courts have acted in a willful manner, with impunity, to transgress Petitioner's fundamental rights through a discriminatory application of political influence here. The courts have suppressed Petitioners discovery and denied his right to put evidence on the record based on its assumptive views that Petitioner's allegations are "preposterous", and the court has "scarce time" to consider the claims, and its seriously mistaken assumptions as to nonpayment of sanctions. (Ref: Dist.Crt.Memos. at App. 7, 29.) The trial court has also

imposed sanctions to suppress Petitioner's discovery, his guaranteed access to justice, and his right to put evidence on the record and have a hearing as to attorney and judicial misconduct in connection with the underlying basis of those sanctions.

The courts are obligated to protect personal rights guaranteed by the state and federal constitutions, and they do not have the authority of the people to overturn those rights because of a difference of opinion as to allegations of political corruption. Breen v. Kahl, D.C.Wisc., 296 F.Supp 702, affd. 419 F.2d 1034, cert. denied, 90 S.Ct. 1836; Byars v. U.S., Iowa, 47 S.Ct. 248, 273 U.S. 28. The lower courts effectively made new law to suppress Petitioner's freedom of expression in this case by denying court access for lawful, duly made motions, applications, appeal (July 1992), and trial by jury. Petitioner's use of the judicial process through litigation to enforce his constitutional rights is a means of expression protected by the First and Fourteenth Amendments, (Edwards v. So. Carolina, S.C. 1963, 83 S.Ct. 680, 372 U.S. 229), and where the inhibition of expression occurs in a preliminary proceeding, with no guaranty of a prompt judicial decision on the merits, the procedure is constitutionally defective, (Grove Press Inc. v. City of Phil., C.A.Pa., 418 F2d 82). The First Amendment applies to the judiciary, (Morgan v. State of Florida, Fl, 1976, 337 So.2d 951), and it affords the broadest protection in the area of political expression, (Gewertz v. Jackman, D.C.N.J., 467 F.Supp. 1047).

Petitioner is entitled to strict judicial scrutiny on these issues, (Chrysler Corp. v. New Motor Vehicle Brd., 153 Cal.Rptr. 135).

Respondents actions have been similarly violative of Petitioner's constitutional right to free speech because of the close intertwining relationship of Respondents' willful misconduct and judicial acquiescence in allowing it with impunity.

III. FOURTEENTH AMENDMENT ISSUES PER SE

The lower courts abridged Petitioner's privileges, deprived him of liberty and property without due process of law, and denied him equal protection of the laws as required by the Fourteenth Amendment to the United States Constitution.

Article IV, Section 2, and the Fourteenth Amendment guaranty the Petitioner the rights and immunities of a citizen and insures him the privilege of having those rights and immunities judicially declared and protected because judicial action was properly invoked as to his motions to protect the record, application for order to show cause, discovery requests, motion to strike, request for in-camera review as to misconduct, raise his defenses of the Minnesota Statute of Frauds and other actions taken by him in this case. Whitney v. Madden, 79 NE2d 593, 400 Ill. 185, cert. denied 69 S.Ct. 55, 335 U.S. 828; Valley Natl. Bk. v. Glover, 159 P.2d 292, 62 Ariz 538. Petitioner was denied his privileges and immunities with respect to his defenses as well. Petitioner's right to raise his statute of frauds defense was denied to him by the lower courts. In the trial court, Petitioner clearly raised his defense and argument as to Minn.Stat., Sec. 481.08, which is essentially a statute of frauds provision regarding an attorney's agreement to settle matters in litigation on behalf of a client. The law and argument were raised in the trial court by Petitioner's Memorandum filed August 4, 1992, (beginning at page A-45 of Appellant's Brief), in response to the court's amended order of July 14, 1992, (App. 27). Minn.Stat., Sec. 481.08 raises the same issues as Minnesota's other statute of frauds provisions. Further, the statute of frauds defense is clearly not required to be raised in Minnesota until a party asserts an oral contract obligation, and no later than the point at which the case goes to a jury, (Bruder v. Wolpert, 178 Minn. 330, 227 N.W. 46, 49 Am.Jur., Stat.Frauds, Sec. 603;

Borchardt v. Kulich, 48 N.W.2d 318). Here, the Respondents consistently argued in the trial court that they had an executed written settlement agreement. On its own argument the trial court found that an oral settlement agreement was the basis of the dismissal of the action, and that the oral understanding was substantiated by the marginal notation appearing on the draft of the proposed written agreement, (Dist.Crt.Ord., App. 17-19). Before making that finding, which raised the assertion of an oral contract for the first time in the case, the court arbitrarily "closed the record" thereby again denying Petitioner's vested right to make his defense, (Dist.Crt.Ord., App. 7, last prg.). The Court Of Appeals erroneously decided that the statute of frauds issue was not brought up in the trial court. Petitioner's references and argument relying on Minn.Stat., Sec. 481.08 were raised in the trial court at Petitioner's Memorandum duly served August 4, 1992, (Apl.Brf., A-45), the argument was raised by both of Petitioners Notices Of Appeal, Appellate Brief, Appellate Reply Brief, and at oral argument made in both the District Court and the Court Of Appeals.

On this matter, the Court Of Appeal's decision filed December 21, 1993, (App. 2), first decided that the statute of frauds defense could not be raised on appeal, and then found that the marginal notation appearing on the proposed draft would have met the statute requirements. The Court Of Appeals was not in a position to make findings of fact on that question. The trial court had not made a finding on that point, and it is a proper question only for a jury in this case. Further, the crucial fact question for the jury is not whether Petitioner's attorney had authority to make a settlement, or whether his signature appears on a marginal notation, but whether the notation was made with a present intention to make a binding agreement. Both courts completely ignored that question as put forth by Petitioner's Memorandum of August 4, 1992, his Appellate and Reply Briefs, and his oral argument.

Petitioner was denied his right to due process under the Fourteenth Amendment because he was denied fundamental principles of fairness involving his discovery, his offer of proof, and his right to a hearing on all actions and defenses explained within this Petition and on the record. (Dukich v. Blair, D.C.Washl, 3 F2d 302, 46 S.Ct. 469.) Petitioner was denied his right to a hearing as to his allegations of misconduct by his own attorney in not paying certain sanctions which he had been reimbursed by Petitioner and instructed to pay to the court, and as to the underlying imposition of the sanctions in the first place. All of these issues were raised in the trial court and were duly put forth to the Court Of Appeals. [Note: Petitioner's Motion of Nov. 27, 1991 raised all of these issues, and the resulting judgment, in failing to address the issues did not make them less viable on Petitioner's timely perfected appeals.] Petitioner was denied his right to raise or litigate the facts involving Respondents' Protective Order violations, misrepresentations, and other misconduct documented by Petitioner's papers served and filed in the case.

Petitioner was denied his right to due process by Judge Burke who was required to recuse himself pursuant to MRCP, Rule 63.02 because of his personal friendship with Judge Sommerville, whose conduct was being reviewed on reconsideration by Judge Burke, under special arrangement between Judge Burke and Judge Sommerville made outside of the day-to-day policies and procedures of the trial court assignment office. Petitioner was denied due process by Judge Burke, who stated at a hearing held January 11, 1992 and by his Order dated March 27, 1992, (App. 7), that Petitioner's offer of proof of bribery, and misrepresentation, (including the discovered concealment by Respondents of summary notes which they had been required to identify and produce), and coercion were not justiciable because such allegations represented nothing more than what good attorneys are allowed to do under the American system of justice. Petitioner

was denied due process, by Judge Burke because he did not have the time to properly aprize the facts, as shown by the statements in the orders dated March 27, 1992 and April 1, 1993, and by seriously mistaken assumptions documented on the record. The Court Of Appeals denied due process in dismissing Petitioner's initial appeal of right for purposes of "judicial economy", (Ord., App. 5). The trial court denied due process in sanctioning Petitioner for his refusal to accept a "nuisance settlement" offer. The trial court deprived Petitioner of due process by further sanctioning him for asking reconsideration of the sanction order, and then base on the court's mistaken assumption that Petitioner had not paid the court sanctions to his attorney, the parties and the court. [Note: Certain attorney fees were not paid based on documented letter agreement between counsel, pending completion of Petitioner's discovery depositions which have been blocked by the court.]

Petitioner was denied due process by Respondents in their failure to produce a statement by an alleged victim, when they fired him without regard to his express contract rights and labeled him a sexual harasser. (Van Zandt v. McGee, C.A.La., 202 F2d 490; Stockler v. Mich., 98 S.Ct. 1598.) Respondents and the courts have continued that violation because of their willful prevention of Petitioner's lawful discovery by deposition of the alleged victim, and of investigation notes and summary notes wrongfully concealed by Respondents with impunity from admonition by the courts. The courts protective standard toward Respondents is state action in this case. (Reitman v. Mulkey, Cal., 87 S.Ct. 1627.)

Petitioner has been denied equal protection under the law guaranteed to him by the Fourteenth Amendment because he has been denied equal access to the courts in this case. (State v. Northwestern Prep. Sch., 37 N.W 2d 370; State v. Pehrson, 287 N.W. 313. Respondents have violated court rules at every level of this litigation from the time they filed their late Answer more than one year after it was due under MRCP, Rule 12.01,

through the date of their last filing of a prejudicial brief to the Minnesota Supreme Court in violation of the Court Of Appeals decision striking it. Respondents' misconduct and rule violations were put to the attention of the trial court, Court Of Appeals, and Minnesota Supreme Court. Each tribunal ignored Petitioner's fundamental right to assert the rules and statute provisions against Respondents, thereby giving them absolute control over the litigation without regard to common principles of law and equity. (Thomas Oil, Inc. v. Onsgaard, 215 N.W.2d 793.) At the same time, the courts imposed a separate standard on Petitioner, the courts have denied Petitioner his defenses, sanctioned him on mistaken assumption without a hearing, and granted every meaningful motion made by Respondents whether properly made or not. The lower courts have exercised their discretion without observance of the general rules established for the security of private rights. (Valley Natl. Bk. of Phoenix v. Glover, 159 P2d 292; Hagar v. Reclamation Dist., 4 S.Ct. 663.)

The lower courts' denial of due process, equal protection, equal access to justice, suppression of disapproved viewpoints, and unchecked oppression of Petitioner throughout this litigation demonstrates the unwillingness of Minnesota Courts to protect those constitutional guarantees that are in place to prevent corruption. Petitioners appeal should be granted to afford him the guaranties of liberty he is entitled to for the protection of his vested rights, and to prevent the insidious erosion of those rights for the benefit of all citizens.

Respectfully submitted,

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